

REMARKS

Claims 37-85 are pending in the above-identified application and have been rejected. Independent claims 37, 48 and 66 have been amended. Applicants reserve the right to claim the subject matter of the pre-amendment claims in this or any other application. Applicants respectfully request reconsideration in view of the foregoing amendments and following remarks.

Claims 37-85 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanesaka in view of Heinonen and Haluszka. As noted, applicants have amended claims 37, 48, and 66. Applicants incorporate by reference the arguments provided in their December 12, 2002 Amendment and provide the following arguments.

Claim 37 recites, *inter alia*, “inputting, into the control device, data representing only a body length of a patient to be ventilated … [and]… calculating, in the control device, at least one ventilatory limit based solely upon said data” (emphasis added). Claims 48 and 66 have been similarly amended. Such amendments make clear that the data being input, data representing a body length of a patient, is the only data used to calculate ventilation parameters.

None of the cited references, either alone or in combination, disclose calculating ventilation parameters based solely upon a body height of a patient to be ventilated. Kanesaka discloses inputting patient weight, height, sex and other clinical conditions (Column 4, lines 19-20), but does not disclose calculating ventilation parameters based

solely upon body height. Neither Heinonen nor Haluszka add anything of value to Kanesaka regarding “calculating, in the control device, at least one ventilatory limit based solely upon said data” as recited in claims 37-85.

The Office cited a single English language page as the Haluszka reference. We have since obtained the entire document. The copy we received includes additional translated text, although we have not ourselves translated or commissioned the translation of the entire reference. Although we presume the Office already possesses this document, we nevertheless enclose a copy.

The Office action states that Haluszka discloses the exclusivity of using only patient height. The Haluszka reference, is directed to plethysmographic methods for predicting values of multiple respiratory parameters of children's lungs. Nothing in Haluszka indicates that patient height alone is used to calculate a ventilation parameter for the ventilation of a patient. Instead, Haluszka states that body height was the best predictive variable for measured parameters of respiration in children. The translated portion of Haluszka fails, however, to describe what the parameter of respiration are. Nonetheless, on the second page of Haluszka there is some indication that body height does not correlate well with at least one respiratory parameter, namely  $R_{aw}$  (“Correlation of  $R_{aw}$  with height, although significant, was not too strong....Referring to the above, high correlations of  $R_{aw}$  with height, observed in small and not properly selected children, seem to be accidental.”)

Reiterating their December 12, 2002 arguments, applicants respectfully disagree that Haluszka is in the same field of endeavor as the recited invention. Haluszka is non-analogous to the field of ventilatory devices, instead being directed to measurements taken during medical examinations, an entirely separate field of endeavor. As stated in M.P.E.P. §2141.01(a), “[i]n order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned.”

The present invention is directed to a method of operating a ventilator, which includes but is not limited to “calculating at least one ventilation parameter based solely upon the input body length of the patient”, and using that ventilation parameter in assisting a patient to be ventilated. The Haluszka reference, on the other hand, is directed to predicting certain respiratory parameters based upon various anthropometric measurements. Haluszka states that body height was the best predictive variable for all measured parameters in examining children’s lungs (paragraph 2). However, Haluszka does not provide an explanation as to what the body height is best at predicting, nor does it provide any correlation of body height to ventilatory parameters, limits or alarms as recited in the claims. Thus, the Haluszka reference is not in applicants’ field of endeavor nor is it “reasonably pertinent to the particular problem with which the invention is concerned”. Consequently, the Haluszka reference is an improper reference to be relied upon as a basis for a rejection.

Furthermore, applicants submit that, even if Haluszka was an appropriate reference to be relied upon, there is no motivation to combine the teachings of Haluszka with Kanesaka and Heinonen. Specifically, as noted above, while Haluszka states that body height was, in the study performed, “the best predictive variable”, Haluszka nowhere states what respiratory parameters body height is the best at predicting or whether the respiratory parameters are in any way related to the recited ventilation parameters. Further, for at least one respiratory parameter, namely  $R_{aw}$ , body height was not strongly correlated. There is no teaching in the Haluszka reference that body height alone can be used to predict appropriate ventilation parameters for a person. Hence, Haluszka fails to add anything pertinent to the disclosures of Kanesaka and Heinonen, and one ordinarily skilled in the art therefore would not have been motivated to combine Haluszka with the other cited references.

Additionally, applicants submit that even if one of ordinary skill in the art was to have combined the teachings of Haluszka with the other cited references, the combination would still not result in the recited invention since none of the cited references teach or suggest a method of operating a ventilator that includes inputting data representing only a body length and calculating at least one ventilation parameter based solely upon that input data.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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Respectfully submitted,

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